

Minutes
State Air Pollution Control Board Meeting
Friday, March 18, 2011
House Room D
General Assembly Building
9TH & Broad Streets
Richmond, Virginia

Board Members Present:

Hullihen Williams Moore, Chair
Richard D. Langford
Manning "Chip" Gasch, Jr
Randolph L. Gordon, MD, MPH

Sterling E. Rives III, Vice-Chair
Roger L. Chaffe
Jo Anne Scott Webb

Department of Environmental Quality:

David K. Paylor
Cindy M. Berndt

Attorney General's Office:

Kerri L. Nicholas, Assistant Attorney General

The meeting convened at 9:00 a.m. recessed at 11:15 a.m., reconvened at 11:24 a.m., recessed at 12:10 p.m., reconvened at 1:00 p.m., and adjourned at 3:25 p.m.

Minute No. 1 - Review and Approval of Agenda: The agenda was approved with an explanation of the order and time limitations for presentations on the fugitive dust petition, an acknowledgment that the regulations may be moved to after presentation of the State Advisory Board on Air Pollution (SABAP) reports and a discussion of projects for 2011 for the SABAP would be added after presentation of the reports.

Minute No. 2 - Minutes: The Board, on a motion by Mr. Rives, unanimously approved the minutes of the December 18, 2010, meeting with a correction to the spelling of Mr. Shobe's name in Minute No. 3.

Minute No. 3 – Fugitive Dust Petition/Roda: Ms. Karen G. Sabasteanski briefed the Board on the petition for rulemaking submitted by the Sierra Club and Southern Appalachian Mountain Stewards and the public participation process and summarized the comments received on the petition. Prior to the presentation of Department recommendations, Ms. Crystal Bazyk briefed the Board on the history of the Department's efforts on fugitive dust in Roda. Mr. Charles Turner briefed the Board on the Department's monitoring study and then Ms. Bazyk briefed the Board on the actions taken by the Department, by the Department of Mines, Minerals and Energy, the Virginia State Police and several of the coal companies.

The Board then received comments from Hannah Morgan, Adam Wells, Felicia Eldridge, Andy Eldridge, Toby Reed, Juliana Clarke, Mike Clarke, John Stines, Susanna Ronalds-Hannah, Dorothy Taulbee, Jane Branham and Glen Besa in favor of the petition and from John Heard, Phil Mullins, Steve Hodges, Paul Maggard, Dale Bennett, Auggie Wallmeyer, Sam Hollins and Ryan Dunn opposed to the petition.

Based on the Board book material, staff presentation, public comments and Board discussions, the Board, on a motion by Mr. Rives, unanimously voted to deny the petition for rulemaking and requested that the Director, or his designee, issue a guidance document regarding fugitive dust generated by coal mining, processing, handling or transportation activities that incorporates the following concepts:

1. Notes the lead role of the Department of Mines, Mineral and Energy and the existence of the Department of Mines, Mineral and Energy/Department of Environmental Quality Memorandum of Agreement.
2. That, if in the opinion of the Department of Environmental Quality reasonable precautions were not being taken and the resulting conditions cause or contribute to the endangerment of human health and the Department of Mines, Minerals and Energy does not take enforcement action, the Department of Environmental Quality would consider doing so pursuant to the existing regulations.
3. That, when determining appropriate reasonable precautions, the Department of Environmental Quality will consider the potential impact on human health, i.e., proximity of the fugitive dust release to human habitation and activities.
4. That reasonable precautions to minimize the amount of coal dust and other dust becoming airborne may include washing down loaded trucks before they leave the mine and rinsing out the beds of emptied trucks and installation of rumble strips or similar devices to remove material from wheels and undercarriages before leaving a permitted site.
5. That street sweeping or other measures to remove accumulated fugitive dust from public roadways may also be a reasonable precaution when necessary to prevent the dust from becoming airborne or re-entrained into the atmosphere.

Minute No. 4 – State Advisory Board on Air Pollution Reports: The Board received reports from the State Advisory Board on Air Pollution entitled: NO_x Rules, Monitoring and Mitigation; Community Based Toxics Strategy; Cost of Compliance; and Climate Change Report Addendum.

Minute No. 5 – State Advisory Board on Air Pollution Projects for 2011: The Chair suggested that the State Advisory Board on Air Pollution consider reviewing the permitting thresholds in Article 6 of Chapter 80 of the regulations for the control and abatement of air pollution to determine how they were established, what other states are doing, what the Board's various options may be including the pros and cons of the option.

Minute No. 6 - General Permit concerning Qualified Energy Generator for Biomass Pilot Test Facilities (Rev. Cg):

Ms. Mary E. Major presented the final general permit for biomass pilot test facilities for qualified energy generators. Ms. Major advised the Board that the General Assembly adopted legislation which mandates the Board develop an expedited process for issuing any permit that the Board is required to issue for the construction or operation of a "qualified energy generator" provided that the generator is not subject to the major new source review program. She reviewed the substantive provisions of the general permit that were released for public comment, reviewed the public comment that was received on the proposal, and the substantive revisions being recommended for the final regulation.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Langford, unanimously adopted the proposal with an effective date consistent with the Administrative Process Act and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

Minute No. 7 - Ambient Air Quality Standard for SO₂ (Rev. H10):

Mr. Gary Graham presented a final revision to the Regulations for the Control and Abatement of Air Pollution concerning SO₂. Mr. Graham informed the Board that the U.S. Environmental Protection Agency had issued a regulation revising the NAAQS for sulfur oxides (SO_x) measured as sulfur dioxide (SO₂). He explained that (i) the current primary annual ambient air quality standard remains 80 micrograms per cubic meter (0.030 parts per million), (ii) the current primary 24-hour ambient air quality standard remains 365 micrograms per cubic meter (0.14 parts per million), (iii) a new primary 1-hour annual ambient air quality standard has been added at 75 parts per billion (ppb), (iv) the secondary ambient air quality standard remains at 1,300 parts micrograms per cubic meter (0.50 parts per million), (v) the new 1-hour annual primary standard is met when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with a new Appendix T of 40 CFR Part 50, (vi) the new standard became effective on August 23, 2010, and (vi) the current primary 24-hour and annual standards will no longer apply to an area one year after the designation of that area by EPA under the new standard.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Chaffe, unanimously adopted the proposal with an effective date consistent with the Administrative Process Act and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

Minute No. 8 – High Priority Violators Report: Mr. Craig Nicol presented a report on high priority violators for the quarter ending December 31, 2011.

Minute No. 9 – Public Forum: No one appeared during the public forum.

Minute No. 10 – Air Division Director’s Report: Mr. Michael Dowd briefed the Board on the following: NAAQS Developments, EPA’s Final Combustion Rules, Completion of Virginia’s GHG Tailoring Rule and the Proposed Utility MACT.

Minute No. 11 – Future Meetings: The Board confirmed June 10, 2011, as the date of its next meeting.

Cindy M. Berndt, Director, Office of Regulatory Affairs